REMARKS

Claims 1-20 were pending in this application.

Claims 1-20 have been rejected.

Claims 1-15 and 17-20 have been amended as shown above.

Claim 16 has been cancelled.

Claim 21 has been added.

Claims 1-15 and 17-21 are now pending in this application.

Reconsideration and full allowance of Claims 1-15 and 17-21 are respectfully requested.

I. REJECTION UNDER 35 U.S.C. § 102

The Office Action rejects Claims 1-4, 6-10, and 12-19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,740,178 to Jacks et al. ("*Jacks*"). This rejection is respectfully traversed.

A prior art reference anticipates a claimed invention under 35 U.S.C. § 102 only if every element of the claimed invention is identically shown in that single reference, arranged as they are in the claims. (*MPEP § 2131; In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. (*MPEP § 2131; In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985)).

Jacks recites a technique for controlling the update of an EEPROM, which provides backup and initialization data to a RAM. (*Abstract*). An EEPROM 100 is divided into two segments 102-

104, where only one segment can be updated at a time. (*Col. 2, Lines 43-65*). Each segment 102-104 of the EEPROM 100 includes various data, such as a word 301 containing a unique key and sequence number. (*Col. 2, Line 66 – Col. 3, Line 14*). Each segment 102-104 of the EEPROM 100 also includes CRC check sums for various blocks of data in a segment 319 of the EEPROM 100. (*Col. 3, Lines 38-44 and 60-62*). When transferring data from the EEPROM 100 to a RAM 130, the CRC check sums in the EEPROM 100 are compared to CRC check sums for the RAM 130. (*Col. 4, Lines 1-7*).

Claims 1, 6, and 13 recite that "original verification data for [a] shadow memory" is calculated. Claims 1, 6, and 13 also recite that shadow data in the shadow memory is verified by "calculating current verification data for the shadow memory" and "determining whether the current verification data matches the original verification data." In contrast, *Jacks* recites a technique for copying data from an EEPROM to a RAM, where CRC check sums stored in the EEPROM are compared to CRC check sums determined for the RAM. In other words, *Jacks* recites comparing CRC check sums from one memory (the EEPROM) to CRC check sums for another memory (the RAM). *Jacks* lacks any mention of initializing a shadow memory and then determining whether "original verification data for the shadow memory" matches "current verification data for the shadow memory" as recited in Claims 1, 6, and 13.

Jacks does recite using the words 301 in the segment 102-104 of the EEPROM 100 (each containing a unique key and a sequence number) to identify the segment with the most recent software update. (*Col. 5, Lines 7-24*). However, *Jacks* appears to indicate that the words 301 in the two segments 102-104 cannot match. Either one segment has a non-zero word 301 while the other

segment has a zero word 301, or both segments have different words 301. (*Col. 5, Lines 12-24*). This does not and cannot anticipate calculating "original verification data for the shadow memory" and determining if "current verification data for the shadow memory" matches the original verification data as recited in Claims 1, 6, and 13.

For these reasons, *Jacks* fails to anticipate the Applicant's invention as recited in Claims 1, 6, and 13 (and their dependent claims). Accordingly, the Applicant respectfully requests withdrawal of the § 102 rejection and full allowance of Claims 1-4, 6-10 and 12-19.

II. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 5, 11, and 20 under 35 U.S.C. § 103(a) as being unpatentable over *Jacks* in view of U.S. Patent No. 5,953,352 to Meyer ("*Meyer*"). This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP § 2142; In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP § 2142; In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)). Only when a *prima facie* case of obviousness is established does the burden shift to the Applicant to produce evidence of nonobviousness. (*MPEP § 2142; In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)). If the Patent Office does

not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant of a patent. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985)).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. (*In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993)). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the Applicant's disclosure. (*MPEP § 2142*).

Claims 5, 11, and 20 depend from Claims 1, 6, and 13. As shown above in Section I, Claims 1, 6, and 13 are patentable. As a result, Claims 5, 11, and 20 are patentable due to their dependence from allowable base claims.

Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejection and full allowance of Claims 5, 11, and 20.

III. NEW CLAIM

The Applicant has added new Claim 21. The Applicant respectfully submits that no new

matter has been added. At a minimum, the Applicant respectfully submits that Claim 21 is patentable for one or more reasons discussed above. The Applicant respectfully requests entry and full allowance of Claim 21.

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CONCLUSION

The Applicant respectfully asserts that all pending claims in this application are in condition for allowance and respectfully requests full allowance of the claims.

If any issues arise or if the Examiner has any suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@munckbutrus.com*.

The Commissioner is hereby authorized to charge any fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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Date: Dec 28, 2006

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